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Federal Communications Commission

DA 93-955

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 5 4 03 PM '93

DISPATCHED BY MM Docket No. 93-230
In the Matter of

Amendment of Section 73.202(b), RM-8298
Table of Allotments,
FM Broadcast Stations.
(Madison, South Dakota and
Slayton, Minnesota)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: July 23, 1993; Released: August 5, 1993

Comment Date: September 27, 1993
Reply Comment Date: October 12, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Wallace Christensen ("petitioner"), requesting the substitution of Channel 276C2 for Channel 276A at Slayton, Minnesota. Petitioner also requests modification of his construction permit (BPH-921216MC) for Channel 276A to specify operation on the higher class channel.¹ Petitioner provided an engineering study in support of the proposal and indicated he would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Slayton with a wide coverage area FM service. Petitioner notes that Channel 276C2 can be allotted to Slayton, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 288A is substituted for Channel 276A at Madison, South Dakota.² Station KJAM-FM operates on Channel 276A at Madison. The proposed substitution at Madison can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station KJAM-FM.³ We shall also propose to modify the construction permit for Channel 276A to specify operation on Channel 276C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner

has acknowledged his responsibility to reimburse Station KJAM-FM, Madison, South Dakota, for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 276C2 to Slayton, Minnesota, since it would provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Present	Channel No. Proposed
Madison, South Dakota	276A	288A
Slayton, Minnesota	276A	276C2

5. IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, Madison Broadcasting Co., Inc., the licensee of Station KJAM-FM, Madison, South Dakota, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 288A in lieu of Channel 276A.

6. Pursuant to Section 1.87 of the Commission's Rules, Madison Broadcasting Co., Inc., may not later than **September 27, 1993**, file a written statement showing with particularity why their respective authorizations should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Madison Broadcasting Co., Inc. to furnish additional information. If Madison Broadcasting Co., Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Madison Broadcasting Co., Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Madison Broadcasting Co., Inc.
Station KJAM-FM
Post Office Box D
101 S. Egan Avenue
Madison, South Dakota 57042

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

¹ The construction permit for Channel 276A was granted on July 8, 1993, and expires on January 8, 1995.

² The coordinates for Channel 276C2 at Slayton are 43-55-16

and 95-57-57.

³ The coordinates for Channel 288A at Madison are 43-59-08 and 97-07-42.

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **September 27, 1993**, and reply comments on or before **October 12, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dennis F. Begley
Reddy, Begley & Martin
1001 22nd Street, N.W., Suite 350
Washington, D.C. 20037

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.